

## OGC Has Reviewed

### COMPARATIVE DISABILITY BENEFITS -- MILITARY AND CIVILIAN PERSONNEL

1. This analysis is complicated by the multitude of diverse benefits accruing to military personnel depending upon many factors--length of service, rank, reserve or regular status, age, etc. Consequently, only examples of limited factual situations which may help to illustrate a general comparison are given.

2. Civilian employees of CIA are entitled to the death and disability benefits of the Federal Employees' Compensation Act, generally considered the most generous system yet devised. The category of included personnel is very broad and probably includes some of our agents as well as staff employees. The following is a list of some of the salient benefits provided under the Act:

(a) All personal injuries received at work and diseases proximately caused by the employment are covered.

(b) All medical expenses, including hospitalization, are paid by the Government without cost to the employee.

(c) An employee is paid for his loss of wages while disabled at a rate of 2/3's of his salary if he has no dependents, and 3/4's of his salary if he has one or more dependents.

(d) If the employee suffers total permanent disability, he will receive the above percentage of his wages for the remainder of his life.

(e) If the employee suffers a permanent partial injury, he will receive in addition to any payment for periods of temporary disability due to the same accident, a cash award proportionate to the degree of injury (calculated in terms of weeks).

(f) The employee who is permanently disabled is entitled to vocational rehabilitation at the expense of the Government.

(g) If the employee is killed, his family receives \$400.00 for burial expenses and the expense of transporting the body from his official station to his home is borne by the Government.

(h) The widow of the deceased employee receives 45% of his monthly pay until she dies or remarries. This award is increased by 15% for each child, unmarried, and under eighteen years of age, to a maximum of 75% for all dependents.

3. The primary distinction between benefits accruing to the civilian employee and those to the career member of the armed forces is that the latter is not confined to receiving benefits for disability incurred in the line of duty. The serviceman receives the benefits of the temporary

disability retired list unless his disability resulted from intentional misconduct, willful negligence, or while he was unlawfully away from his post of duty. If he is killed while in service, his dependents will not be put to the burden of establishing the death resulted from a hazard incident to the work. The law presumes that a person who dies in the active military service, dies in the line of duty and not as a result of his own misconduct. The civilian's dependents receive no such presumptive benefits where the death occurs off the official premises and outside the normal working day.

4. The dependents of a serviceman, who is killed, whether or not in the line of duty, receives the proceeds of a \$10,000 life insurance policy which the serviceman may carry at no cost to himself. This is over and above all other statutory benefits to the dependents and is not received by the dependents of civilian personnel. However, the civilian employee of this Agency may protect his dependents to even a greater extent (\$27,000 for accidental death) at a nominal cost (\$8.33 a month at age 30) with the WAEPA policy.

Another benefit to the dependents of a serviceman is the gratuity pay of six months salary received upon the serviceman's death, to which the dependents of a civilian employee are not entitled.

5. Military personnel who are found unfit by reason of physical disability for active duty may be placed on the temporary disability retired list for a period up to five years and receive compensation during this period whether or not the disability was related directly to their duty. While on the temporary disability list they receive an amount equal to the monthly basic pay of the rank held at the time they are put on the disability list, multiplied by 2 1/2% per year of active service, with a maximum of 75% and a minimum of 50%, regardless of length of service.

If the officer is retired for physical disability in excess of 30% and contracted in the line of duty, he receives the disability percentage of his base pay (not to exceed 75%). This is calculated in much the same manner as the civilian employee's disability annuity, and carries the same top limit.

6. For the purpose of comparison, a civilian employee at a grade of GS-11, and an Army Captain are generally considered to be on a somewhat equal level although the former will draw more of his benefits in the form of salary; the latter will receive less in salary and more in allowances. The Captain with ten years service will receive a base salary of approximately \$370 a month, the GS-11, with equal service, nearly \$500 a month. Some comparisons if both are disabled or killed overseas:

a. Both will receive, if injured while in the line of duty, full medical care at no cost to themselves while they are hospitalized pending determination of their ability to return to duty. The Captain will receive full pay and allowances. The civilian employee may elect to exhaust first his sick and annual leave. If his disability is prolonged and his leave is exhausted he will receive from the Bureau

two-thirds (2/3) of his basic pay plus allowances if he is single; three-fourths (3/4) if he is married.

b. If both are temporarily injured out of the line of duty, or inflicted with a non-duty disease, the Captain will receive his full salary while recovering. As far as the Federal Employees' Compensation Act is concerned, the civilian will be thrown on his own resources unless the relationship between the injury and line of duty is doubtful, in which case he may be granted preliminary and emergency treatment until the relationship is clarified. The employee of this Agency may obtain a limited protection against the non-duty accident medical costs through the Government Employees' Health Association for a premium of \$1.60 per month.

c. If both are unable to return to work due to their disability, the Captain will be placed on the Temporary Disability Retired List and receive a pension based upon the degree of disability. If the disability is 100%, he will receive 75% of his base salary (\$277) if the injury was or aggravated in service. The civilian employee (with dependents) will receive approximately \$375 a month and obviously will be "better off". This is because the Captain's allowances are not reflected in his base salary for retirement purposes. However, if the Captain is forced to retire for non-service incurred disability (in the same sense of civilian "non-service incurred"), he will receive the full \$277 for a 100% disability. The civilian employee will receive nothing under the Federal Employees' Compensation Act but will receive 15% of his basic salary (\$75 a month) from the Civil Service Retirement System.

d. If both employees are killed in line of duty (with the military officer holding the distinct advantage in the concept of what constitutes line of duty), the Captain's dependents will receive:

1. the proceeds of a \$10,000 insurance policy which he may have at no cost to himself.
2. a death gratuity payment of \$2,200.
3. a small widow's and dependent children's pension of some \$50 to \$90. a month.

The dependents of the civilian employee with a wife and two children will receive from the Bureau of Employees' Compensation nearly \$375 a month (75% of his base salary). Obviously the picture is much rosier for the civilian's dependents. But if the GS-11 were killed in an accident unrelated to duty, his dependents would receive only a small annuity from the Civil Service Retirement System.

7. Military personnel receive a related benefit in the form of free medical care for their dependents which does not accrue to the civilian employee. However, this would be more appropriately considered in a broad comparison of benefits and disadvantages of civilian versus military status than in the analysis at hand.

8. In summary it may be said that the civilian employee and his dependents are better protected when the disability may be traced to the employment. The serviceman stands at advantage when the disability is difficult or impossible to relate to the job.

OFFICE OF GENERAL COUNSEL

*OGC/MLF/IMM*